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January 6, 2009

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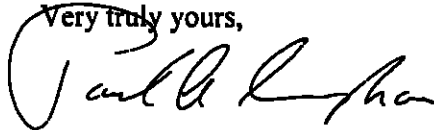
The Honorable Anne K. Quinlan, Esq
Acting Secretary
Surface Transportation Board
Office of the Secretary
395 E Street, S W
Washington, DC 20423-0001

**Re: *Canadian National Railway Company and Grand Trunk Corporation –
Control – EJ&E West Company (STB Finance Docket No. 35087)***

Dear Ms. Quinlan:

Enclosed for filing in the above referenced docket please find the Applicants' Motion to Strike the Village of Barrington's Petition for Stay Pending Judicial Review (designated as CN-53)

Very truly yours,



Paul A. Cunningham

Counsel for Canadian National Railway Company
and Grand Trunk Corporation

Enclosure

cc All parties of record

EXPEDITED HANDLING REQUESTED

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Finance Docket No 35087

CANADIAN NATIONAL RAILWAY COMPANY
AND GRAND TRUNK CORPORATION
- CONTROL -
EJ&E WEST COMPANY

**APPLICANTS' MOTION TO STRIKE THE VILLIAGE OF BARRINGTON'S
PETITION FOR STAY PENDING JUDICIAL REVIEW**

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*Counsel for Canadian National Railway Company
and Grand Trunk Corporation*

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CANADIAN NATIONAL RAILWAY COMPANY
AND GRAND TRUNK CORPORATION
– CONTROL –
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**APPLICANTS' MOTION TO STRIKE THE VILLAGE OF BARRINGTON'S
PETITION FOR STAY PENDING JUDICIAL REVIEW**

Canadian National Railway Company and Grand Trunk Corporation (collectively, "Applicants") hereby move to strike the petition for stay pending judicial review (BARR-7), which was filed by the Village of Barrington ("Barrington") at the end of the day on January 5, 2009

Under the Board's rules, petitions for a stay pending judicial review must not exceed 10 pages 49 C F R § 1115.5(c). Yet, without any explanation, motion for leave, or authority, Barrington has filed a 58-page petition (including 214 footnotes) for stay pending judicial review. Barrington's violation of the Board's clear rules should not be countenanced, its petition should be stricken.¹

The majority of Barrington's petition is an effort to supplement and elaborate the arguments that it and others have made concerning the NEPA review that the Board and its

¹ Applicants respectfully request that the Board rule on this Motion to Strike by Friday, January 9, 2009, so that Applicants will know whether they need to reply to Barrington's petition within five days of its filing, as specified in 49 C F R § 1115.5(a).

Section of Environmental Analysis conducted in this proceeding. Barrington, however, has had ample opportunity to raise the issues it seeks to argue in its stay petition,² and it is improper for it to attempt to supplement the record through its petition for stay, either for further consideration by the Board or to bolster a possible stay petition addressed to a court of appeals.³ “It is not the purpose [of] the stay provision at 49 CFR 1115.5 to afford yet another bite at the apple.” *Tri-State Brick & Stone of N.Y. – Petition For Declaratory Order*, STB Finance Docket No. 34824, slip op. at 3 (STB served Feb. 12, 2008).

Barrington’s excessively long petition for stay is also inappropriate in the context of a briefing in which all other parties and the Board itself are operating under compressed time periods with strict page limits. Parties would ordinarily be permitted only 10 pages to respond to a petition for stay, with that response due within 5 days. Indeed, Barrington itself has asked the Board for expedited consideration of its request. Given these page limits and short time frames, Barrington’s petition, which is roughly six times longer than permitted by rule, would prejudice Applicants and any other parties wishing to respond.

If Barrington wishes to file an appropriate petition for stay, striking the present petition would not prevent it from doing so. Under 49 C.F.R. § 1115.5(a), a petition for stay pending

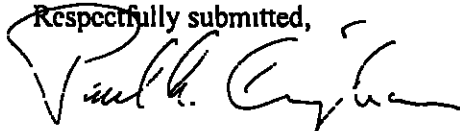
² Indeed, Barrington’s petition contains many redundant arguments, contrary to the requirements of 49 C.F.R. § 1104.8. For example, Barrington’s petition repeats the same arguments it raised in its comments on the draft environmental impact statement (BARR-6, filed Sep. 30, 2008), or that other parties had already raised. Compare BARR-6 at 24-28 with BARR-7 at 10-17 (discussion of allegedly improper alternatives analysis), BARR-6 at 6-7 with BARR-7 at 18-22 (discussion of alleged lack of benefits from the proposed Transaction), BARR-6 at 75-78 with BARR-7 at 22-28 (double-tracking entirety of EJ&E is purportedly reasonably foreseeable), BARR-6 at 6-10 with BARR-7 at 28-31 (traffic growth on CN’s existing lines is purportedly reasonably foreseeable).

³ Under Fed. R. App. P. 27(d)(2), a petition to stay in a court of appeals would be limited to 20 pages. By filing its over-long stay petition with the Board, which Barrington would presumably attach to any similar petition to the court, it may thereby be attempting also to evade the page limit that would apply there.

judicial review "must be filed not less than 10 days prior to the date the terms of the action take effect " Barrington therefore still has several days in which to file

The Board should strike the Village of Barrington's petition for stay pending judicial review

Respectfully submitted,



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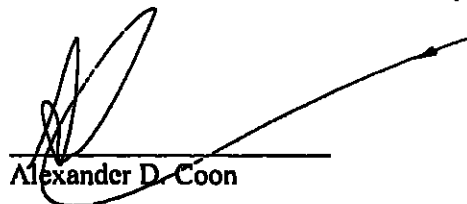
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*Counsel for Canadian National Railway Company
and Grand Trunk Corporation*

January 6, 2009

CERTIFICATE OF SERVICE

I hereby certify that I have this 6th day of January, 2009, served copies of Applicants' Motion to Strike the Village of Barrington's Petition for Stay Pending Judicial Review (designated as CN-53) upon all known parties of record in this proceeding by first-class mail or a more expeditious method



Alexander D. Coon